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**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA**

In re:  
USA COMMERCIAL MORTGAGE COMPANY,  
  
Debtor.

In re:  
USA CAPITAL REALTY ADVISORS, LLC,  
  
Debtor.

In re:  
USA CAPITAL DIVERSIFIED TRUST DEED FUND,  
LLC,  
  
Debtor.

In re:  
USA CAPITAL FIRST TRUST DEED FUND, LLC,  
  
Debtor.

In re:  
USA SECURITIES, LLC,  
  
Debtor.

Affects:  
☒ All Debtors  
☐ USA Commercial Mortgage Company  
☐ USA Capital Realty Advisors, LLC  
☐ USA Capital Diversified Trust Deed Fund, LLC  
☐ USA Capital First Trust Deed Fund, LLC  
☐ USA Securities, LLC

USACM LIQUIDATING TRUST; and  
USA CAPITAL DIVERSIFIED TRUST DEED FUND,  
LLC;

Plaintiffs,

v.

BEADLE, MCBRIDE, EVANS & REEVES, LLP,  
REEVES, EVANS, MCBRIDE & ZHANG, LLP, TG  
MCBRIDE CPA LTD., and T. GARTH MCBRIDE,

Defendants.

Case Nos.:  
BK-S-06-10725-LBR  
BK-S-06-10726-LBR  
BK-S-06-10727-LBR  
BK-S-06-10728-LBR  
BK-S-06-10729-LBR

JOINTLY ADMINISTERED  
Chapter 11 Cases

Judge Linda B. Riegler

**APPLICATION TO  
COMPROMISE AND SETTLE  
CONTROVERSIES WITH  
BEADLE, MCBRIDE, EVANS &  
REEVES, LLP, ET AL.**

**APPLICATION TO COMPROMISE AND SETTLE CONTROVERSIES WITH  
BEADLE, MCBRIDE, EVANS & REEVES, LLP, ET AL.**

Geoffrey Berman (“Berman” or the “Trustee”), Trustee of the USACM Liquidating Trust (the “USACM Trust”) and Michael Tucker (“Tucker” or the “Manager”), Manager of the USA Capital Diversified Trust Deed Fund, LLC (“DTDF”) hereby files this *Application to Compromise and Settle Controversies with Beadle, McBride, Evans & Reeves, LLP, et al.* (the “Motion”) and moves this Honorable Court for: (a) an order pursuant to Federal Rule of Bankruptcy Procedure 9019 (“Rule 9019”) approving the Settlement Agreement, Mutual Release, and Covenants (the “Settlement Agreement”) between the Trustee, the USACM Trust, the Manager, DTDF, and the Defendants, Beadle, McBride, Evans & Reeves, LLP, Reeves, Evans, McBride & Zhang, LLP, TG McBride CPA Ltd., and T. Garth McBride (collectively, “BMER”) and (b) an order pursuant to Nevada Revised Statute § 17.225, et seq. barring claims against BMER for indemnity and/or contribution. A proposed form of order is attached hereto as Exhibit “A.” Proposed findings of fact and conclusions of law are attached as Exhibit “B.”

This Motion is made pursuant to Rule 9019 and Nevada Revised Statutes §17.225, et seq. and is based upon the points and authorities listed herein, the Declaration of Geoffrey Berman in Support of the Motion to Approve Settlement filed in support of this motion (the “Berman Declaration,” hereto attached as Exhibit “C”), the Declaration of Michael Tucker in Support of the Motion to Approve Settlement filed in support of this motion (the “Tucker Declaration,” hereto attached as Exhibit “D”), and any evidence and argument to be presented at the time of the hearing of the Motion.

1 **POINTS AND AUTHORITIES**

2 **I. JURISDICTION AND VENUE**

3 1. On April 13, 2006 (the “Petition Date”), USA Commercial Mortgage Company  
4 (“USACM”), DTDF, USA Capital First Trust Deed Fund, LLC (“FTDF”), USA Securities, LLC,  
5 and USA Capital Realty Advisors, LLC (collectively, the “USA Capital Debtors”) filed  
6 voluntary petitions for relief under chapter 11 of the Bankruptcy Code in the United States  
7 Bankruptcy Court for the District of Nevada (the “Bankruptcy Court”) which are jointly  
8 administered as Case No. BK-S-06-10725-LBR (the “USA Capital Bankruptcy Case”).

9 2. On November 15, 2006, the USA Capital Debtors filed their First Amended  
10 Disclosure Statement [Docket #1798] (the “Disclosure Statement”) for the USA Capital Debtors’  
11 Third Amended Joint Plan of Reorganization [Docket # 1799] (the “Plan”), which was confirmed  
12 by the Bankruptcy Court by Order dated January 8, 2007 [Docket #2376] (the “Confirmation  
13 Order”) and the Findings of Fact and Conclusions of Law in Support of the “Order Confirming  
14 the Debtors’ Third Amended Joint Plan of Reorganization, As Modified Herein” [Docket #2377]  
15 dated January 8, 2007. The Plan became effective on March 12, 2007. On December 8, 2006,  
16 the USACM Committee filed its Plan Documents Supplement and Disclosures [Docket # 2002]  
17 (the “USACM Disclosure Supplement”). Also on December 8, 2006, the DTDF Committee filed  
18 its Plan Documents Supplement and Notice of Disclosures [Docket #2001] (the “DTDF  
19 Disclosure Supplement”).

20 3. The USACM Trust was created pursuant to the Plan and is governed by the  
21 provisions of the Liquidating Trust Agreement (the “USACM Trust Agreement”) as described in  
22 the USACM Disclosure Supplement. Berman serves as the trustee of the USACM Trust. The  
23 Plan retained USACM’s causes of action [Plan ¶ IV. D. 1] along with certain of FTDF’s causes

1 of action [Plan ¶ IV. D. 1], for enforcement by the USACM Trust. Pursuant to the USACM  
 2 Trust Agreement [USACM Trust Agreement ¶¶ 2.1. (a) and recital E], USACM Trust's  
 3 beneficiaries include the holders of all allowed general unsecured creditor claims against  
 4 USACM as defined in Plan ¶ II. C. 1. d.

5 4. USACM Trust was vested, pursuant to the Plan, with all USACM Litigation  
 6 Claims as defined in Plan ¶¶ I. A. 95 and IV. D. 1. Additionally, USACM Trust was vested,  
 7 pursuant to the Plan, with all assignable FTDF Litigation Claims as defined in Plan ¶¶ I. A. 95,  
 8 IV. D. 1, and IV. E. 2. j. FTDF was dissolved on January 16, 2008, as required by Plan ¶ IV. A.  
 9 6. As such, the Trustee has the right to pursue, compromise, settle, release, or otherwise dispose  
 10 of all USACM Litigation Claims belonging to the USACM Trust and estate retained for  
 11 enforcement on behalf of the USACM Trust's beneficiaries, including claims and causes of  
 12 action against BMER.

13 5. The Plan also expressly retained DTDF's causes of action [Plan ¶ IV. D. 2] for  
 14 enforcement by post-effective date DTDF, including the Litigation Claims as defined in Plan ¶¶  
 15 I. A. 95 and IV. D. 2. Pursuant to the Plan and the Confirmation Order, Tucker serves as  
 16 manager of DTDF. Pursuant to DTDF's Amended and Restated Operating Agreement (the  
 17 "DTDF Operating Agreement") included in the DTDF Disclosure Supplement, DTDF's  
 18 members are the beneficiaries any DTDF distributions [DTDF Operating Agreement ¶ 7.03].  
 19 DTDF Operating Agreement ¶ 1.21 defines DTDF's members as the holders of all allowed  
 20 DTDF equity interests described in Plan ¶ II. C. 3. e. As such, the Manager has the right to  
 21 pursue, compromise, settle, release, or otherwise dispose of all Litigation Claims belonging to  
 22 DTDF retained for enforcement, including claims and causes of action against BMER.

23 6. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and

1 1334, as well as Section ¶ VIII. D. 21 of the Plan. This is a core proceeding pursuant to 28  
2 U.S.C. 157(b)(2). Venue is proper herein pursuant to 28 U.S.C. §§ 1408 and 1409. The relief  
3 sought herein is authorized pursuant to Rule 9019.

## 4 II. BACKGROUND

### 5 A. USACM, DTDF, and FTDF

6 7. USACM was formed in 1989 as mortgage broker and loan servicing company  
7 whose primary business activities were: (a) “originating” short-term loans by direct lenders to  
8 commercial real estate developers; and (b) servicing the loans that it originated by collecting  
9 principal and interest from borrowers and distributing those payments to direct lenders. USACM  
10 earned revenue by charging various fees for these services, including origination, servicing, and  
11 extension fees. Between 1997 and 2006, USACM originated and serviced more than \$2.6 billion  
12 in loans to real estate developers. At the time of its bankruptcy filing in April 2006, \$960 million  
13 of these loans remained outstanding.

14 8. DTDF was a real estate investment fund founded in 2000. DTDF offered  
15 membership interests to Nevada investors (the “Investors”), many of whom were also USACM  
16 direct lenders, and used these funds to purchase interests in loans originated and serviced by  
17 USACM. DTDF earned interest as a direct lender and distributed its profits to its Investors on a  
18 periodic basis.

19 9. FTDF was a real estate investment fund founded in 2001. FTDF offered  
20 membership interests to investors across the United States (the “Investors”), many of whom were  
21 also USACM direct lenders, and used these funds to purchase interests in loans originated and  
22 serviced by USACM. DTDF earned interest as a direct lender and distributed its profits to its  
23 Investors on a periodic basis.

1           10. During their tenure, certain culpable insiders turned USACM's loan servicing  
2 operations into a massive fraudulent investment scheme, by misallocating and/or commingling  
3 available funds within the "USA Capital" group of companies. The culpable insiders also looted  
4 and otherwise misused DTDF funds to perpetuate their scheme. DTDF funds were used to make  
5 impermissible loans to entities owned or controlled by the Culpable Insiders and to fund interest  
6 and principal payments to other direct lenders in non-performing loans. The culpable insiders'  
7 wrongful acts were designed to allow the systematic looting of USACM, DTDF, and other  
8 related entities.

9           11. In addition to their wrongdoing related to USACM and DTDF, the culpable  
10 insiders caused FTDF to violate many of its internal lending requirements, as set out in its  
11 prospectus. These violations led to eventual losses when these loans stopped performing.

12           12. On April 13, 2006, USACM and a number of its related companies, including  
13 DTDF and FTDF, collapsed under the weight of this massive fraud perpetrated on them by the  
14 culpable insiders.

15           **B. BMER**

16           13. BMER is a professional corporation organized under Nevada law.

17           14. BMER audited DTDF's financial statements for fiscal years ending December 31,  
18 2000 through December 31, 2003. For the fiscal years 2001 through 2002, BMER issued  
19 unqualified audit opinions on DTDF's financial statements. BMER continued work on DTDF's  
20 2003 financial statements through October of 2004, when it was informed DTDF no longer  
21 required audit services.

22           15. BMER audited FTDF's financial statements for the period ending March 29, 2001  
23 and the fiscal years ending December 31, 2001 through December 31, 2005. BMER issued

1 unqualified audit opinions on FTDF's March 29, 2001 through December 31, 2004 financial  
2 statements, but did not complete its 2005 audit due to FTDF's bankruptcy.

3 **C. The Investigation and Ensuing Settlement Discussions**

4 16. Subsequent to the Petition Date, the USACM Trust and DTDF performed an  
5 extensive investigation of their claims surrounding and related to the bankruptcies. Berman  
6 Declaration ¶ 3; Tucker Declaration ¶ 3. As a result of this investigation, the Trustee and the  
7 Manager contacted BMER regarding a potential lawsuit and BMER's willingness to enter into  
8 pre-litigation settlement discussions. Berman Declaration ¶ 4; Tucker Declaration ¶ 4. The  
9 Trustee and the Manager informed BMER that they were preparing to file suit against BMER  
10 for, inter alia, accounting malpractice/professional negligence and breach of contract arising  
11 from professional services provided by BMER to USACM. Berman Declaration ¶ 4; Tucker  
12 Declaration ¶ 4. On May 16, 2008 the USACM Trust and DTDF filed a civil complaint against  
13 BMER in the United States Bankruptcy Court District of Nevada, Adversary No. 08-1164.  
14 Berman Declaration ¶ 3; Tucker Declaration ¶ 3.

15 17. In May 2008, the USACM Trust, DTDF, BMER, and the insurance carriers for  
16 BMER participated in a mediation conference. Berman Declaration ¶ 4; Tucker Declaration ¶ 4.  
17 Since the mediation, the parties have continued informal settlement discussions in order to  
18 resolve the USACM Trust and DTDF's claims against BMER. Berman Declaration ¶ 4; Tucker  
19 Declaration ¶ 4. As a result of these extensive discussions, meetings, mediation, and subsequent  
20 arms-length settlement negotiations, the parties reached a mutually acceptable agreement for the  
21 complete resolution of any and all claims against BMER in July 2008. Berman Declaration ¶ 4;  
22 Tucker Declaration ¶ 4. The parties have memorialized this settlement by executing the  
23 Settlement Agreement. Berman Declaration ¶ 4; Tucker Declaration ¶ 4. The Trustee and the

1 Manager file this Application seeking the Court's approval of the Settlement Agreement.

2 **III. TERMS OF SETTLEMENT**

3 18. With a view toward maximizing the recoverable value of the USACM Trust and  
4 DTDF's claims, in furtherance of broader efforts to facilitate the estates' distribution of funds,  
5 and to otherwise avoid the time, expense, and uncertainty of further litigation, the USACM Trust  
6 and DTDF—subject to this Court's approval under Rule 9019—have entered into the  
7 confidential Settlement Agreement with BMER (hereto attached as Exhibit "E"). The essential  
8 terms of the comprehensive settlement are as follows:

- 9 a. The insurance carriers for BMER shall pay \$1,500,000.00 (the "Settlement  
10 Amount") to the USACM Trust to settle all claims available to the USACM Trust  
11 and DTDF against BMER;
- 12 b. Consistent with the agreement between the Debtors, DTDF will share in the  
13 settlement as a beneficiary of the USACM Trust and as otherwise outlined in the  
14 agreement between the USACM Trust and DTDF dated and filed with the Court  
15 on March 13, 2008;
- 16 c. Payment of the Settlement Amount is contingent upon the Court's approval of the  
17 Settlement Agreement under Rule 9019; and
- 18 d. Effective upon payment of the Settlement Amount, the parties to the Settlement  
19 Agreement will exchange full mutual releases.
- 20  
21  
22  
23



#### IV. ARGUMENT

##### A. The 9019 Order

###### 1. *The Standard for Approval of Settlement Agreements*

19. Under the terms of the Settlement agreement, the Trustee and Manager are required to seek approval of the Settlement agreement under Rule 9019. Compromise and settlement have long been an inherent component of the bankruptcy process. *See Protective Comm. for Indep. Stockholders of TMT Trailer Ferry v. Anderson*, 390 U.S. 414, 424 (1958) (citing *Case v. Los Angeles Lumber Prods. Co.*, 308 U.S. 106, 130 (1939)). Rule 9019 provides:

(a) COMPROMISE. On motion by the Trustee and after notice and a hearing, the court may approve a compromise or settlement. Notice shall be given to creditors, the United States Trustee, the debtor, and indenture trustees as provided in Rule 2002 and to any other entity as the Court may direct.

Compromises are favored in bankruptcy and public policy favors compromise because litigation “can occupy a court’s docket for years on end, depleting resources of the parties and the taxpayers while rendering meaningful relief elusive.” *In re Grau*, 267 B.R. 896, 899 (Bankr. S.D. Fla. 2001) (quoting *Matter of Munford, Inc.*, 97 F.3d 449, 455 (11th Cir. 1996)). The decision of the bankruptcy judge to approve or disapprove the compromise of the parties rests in his or her sole discretion. *See In re Stein*, 236 B.R. 34, 37 (Bankr. D. Or. 1999). The Trustee and the Manager ask the Court to exercise its authority and discretion and, based upon the standards for the approval of compromises under Rule 9019, approve the Settlement Agreement.

20. The Court, in order to approve a compromise and settlement, must find that it is fair and equitable. *In re Arden*, 176 F.3d 1226, 1228 (9th Cir. 1999); *In re A&C Properties*, 784 F.2d 1377, 1381 (9th Cir. 1986). “In determining the fairness, reasonableness and adequacy of a proposed settlement agreement, the court must consider: (a) [t]he probability of success in the

1 litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the  
 2 complexity of the litigation involved, and the expense, inconvenience and delay necessarily  
 3 attending it; (d) the paramount interest of the creditors and a proper deference to their reasonable  
 4 views in the premises.” *In re A&C Properties*, 784 F.2d at 1381. The debtor is not necessarily  
 5 required to satisfy each of these factors as long as the factors as a whole favor approving the  
 6 settlement. *See In re Pac. Gas and Elec. Co.*, 304 B.R. 395, 417 (Bankr. N.D. Cal. 2004).

7 21. In conducting such an analysis, “a precise determination of likely outcomes is not  
 8 required, since ‘an exact judicial determination of the values in issue would defeat the purpose of  
 9 compromising the claim.’” *In re Telesphere Communications, Inc.*, 179 B.R. 544, 553 (Bankr.  
 10 N.D. Ill. 1994)(quoting *In re Energy Coop, Inc.*, 886 F.2d 921, 927 (7th Cir. 1989)). In *In re*  
 11 *Lion Capital Group*, the court, interpreting the identical factors utilized in the Ninth Circuit,  
 12 concluded that “the court is not finally to decide the numerous questions of law and fact raised . .  
 13 . but rather to canvass the issues and see whether the settlement fall[s] below the lowest point in  
 14 the range of reasonableness.” 49 B.R. 163, 175 (Bankr. S.D.N.Y. 1985) (internal quotations  
 15 omitted).

## 16 2. *The Settlement Agreement is Fair and Equitable*

17 22. The Trustee, the Manager, and Special Counsel have analyzed the claims against  
 18 BMER and have found that Settlement Agreement is reasonable, fair, and equitable in light of all  
 19 of the relevant factors. Berman Declaration ¶ 5; Tucker Declaration ¶ 5. The Trustee and  
 20 Manager believe that the Settlement Agreement is in the best interest of DTDF, the USACM  
 21 Trust and their beneficiaries. Berman Declaration ¶ 5; Tucker Declaration ¶ 5.

a. Probability of Success in the Litigation

23. Considering the uncertainty and contingency involved in potential litigation against BMER, the Settlement Agreement properly considers the probability of success for the USACM Trust and DTDF in litigation.

24. There is no guarantee that the USACM Trust and DTDF would succeed if the parties litigated the dispute that is the subject of the Settlement Agreement. The Trustee and the Manager believe that BMER failed to appropriately audit the financial statements of DTDF, thereby allowing certain insiders to perpetrate a financial fraud on USACM, DTDF, and other related entities that resulted in tens of millions of dollars in damages to the Debtors. Berman Declaration ¶ 3; Tucker Declaration ¶ 3. Furthermore, the Trustee and the Manager believe that BMER failed to appropriately audit the financial statements of FTDF, thereby causing the loss of substantial sums of money due to defaulting loans. Berman Declaration ¶ 3; Tucker Declaration ¶ 3. The Trustee and the Manager believe that: (1) BMER shares substantial responsibility for the Debtors' losses; (2) the claims they can assert against BMER have substantial merit and are supported by the evidence; and (3) litigation would lead to a favorable result. Berman Declaration ¶ 7; Tucker Declaration ¶ 7. However, BMER has consistently and vigorously denied all claims against it and has asserted numerous factual and legal defenses Berman Declaration ¶ 7; Tucker Declaration ¶ 7. BMER has maintained that it fulfilled all of its contractual and professional obligations with respect to its audits. Berman Declaration ¶ 7; Tucker Declaration ¶ 7.

25. Should this matter proceed to litigation, there is no doubt that it would be expensive to litigate as all parties appear intent on vigorously backing their allegations. Furthermore, there is no guarantee or certainty that the USACM Trust and/or DTDF would be

1 successful in prosecuting their claims. Therefore, the Trustee and the Manager have concluded  
2 that accepting payment under the Settlement Agreement is fair, reasonable, and in the interest of  
3 the USACM Trust and DTDF after weighing all relevant and material factors, including the  
4 strengths of the asserted claims and defenses. Berman Declaration ¶¶ 5&8; Tucker Declaration  
5 ¶¶ 5&8.

6 b. The Difficulties to Be Encountered in the Matter of Collection

7 26. Even if the USACM Trust and DTDF were to prevail in litigation, they could  
8 thereafter face a number of issues arising from collection of any judgment. The Trustee and the  
9 Manager are not convinced that BMER has the ability, through insurance or other means, to pay  
10 any judgment the Trustee may obtain in excess of the Settlement Amount. Berman Declaration,  
11 ¶ 11; Tucker Declaration, ¶ 11.

12 27. The USACM Trust and DTDF could conceivably face collection problems in  
13 their claims against BMER. If they were to prevail in litigation, the USACM Trust and DTDF  
14 could not be certain that BMER would be able to pay a large judgment in favor of the debtors.  
15 Berman Declaration ¶ 11; Tucker Declaration ¶ 11. As such, the USACM Trust and DTDF must  
16 look to BMER's insurance policy to fund any judgment against BMER. The Settlement Amount  
17 is significant compared to the total amount of insurance available to BMER, and nearly exhausts  
18 BMER's insurance coverage. Berman Declaration ¶ 11; Tucker Declaration ¶ 11. In connection  
19 with settlement negotiations, BMER's insurance carriers have strongly asserted to the Trustee  
20 that there are meritorious coverage defenses under the relevant insurance policies that would  
21 make some or all of such insurance policy proceeds unavailable to pay any judgment the  
22 USACM Trust or DTDF may recover against BMER. Berman Declaration, ¶ 11; Tucker  
23 Declaration, ¶ 11.

1           28. Finally, the real potential for an appeal of any litigated resolution of the disputes  
2 between the USAM Trust, DTDF, and BMER would make recovery difficult and protracted.

3                   c.     The Complexity of the Litigation Involved and the Expense,  
4                             Inconvenience, and Delay Necessarily Attending It.

5           29. There is no doubt that any adversary proceeding against BMER would be a  
6 complex and costly piece of litigation. Litigation against BMER will involve large discovery  
7 costs associated with millions of pages of document discovery, numerous depositions that could  
8 take days to complete, the retention of several expert witnesses at a high cost, and will involve  
9 multiple parties. Berman Declaration ¶ 12; Tucker Declaration ¶ 12. Each party will necessarily  
10 have to locate and present evidence to support or deny factual allegations, at great expense and  
11 delay to the Parties. This case would be complex, expensive, and like any other litigation, the  
12 outcome is inherently uncertain.

13           30. Actual litigation of the disputes resolved by the Settlement Agreement will  
14 naturally result in considerable expense to both the USACM Trust and DTDF. The Settlement  
15 Agreement permits the parties to resolve this dispute and potential future litigation in a practical  
16 and timely manner with a predictable result that is not obtainable through litigation.

17                   d.     The Paramount Interest of the Creditors

18           31. The paramount interest of the creditor requires the Court to consider whether a  
19 compromise generally “reflects not only the desire of creditors to obtain the maximum possible  
20 recovery but also their competing desire that that recovery occur in the least amount of time.” In  
21 re Marples, 266 B.R. 202, 207 (Bankr. D. Idaho 2001). The Trustee and the Manager have  
22 thoroughly examined the Settlement Agreement, and believe it is in the best interest of the  
23 creditors.

32. The Settlement Amount is substantial and would be a material contribution to

1 both the USACM Trust and DTDF's estates in light of the fact that it was reached prior to filing  
2 suit and given the complexity, expense, and the risks and uncertainty of litigation. Berman  
3 Declaration ¶ 13; Tucker Declaration ¶ 13. The possibility of achieving a better outcome  
4 through litigation is greatly outweighed by the risk that there will be no meaningful recovery by  
5 the USACM Trust and DTDF. The terms of the Settlement Agreement fall within the reasonable  
6 range of likely outcomes of litigation with BMER while eliminating litigation risks, costs, and  
7 delay associated with trial and a potential appeal, and provides an immediate and substantial  
8 recovery to DTDF, the USACM Trust, and their beneficiaries. Berman Declaration ¶ 13; Tucker  
9 Declaration ¶ 13.

10 33. The Settlement Agreement will facilitate prompt and meaningful recoveries for  
11 the benefit of the creditors who have suffered loss as a result of the events leading to the Debtors  
12 bankruptcy. Berman Declaration ¶ 13; Tucker Declaration ¶ 13. Even if the USACM Trust and  
13 DTDF's prosecution of an adversary proceeding were successful, creditors would face a long  
14 wait for a recovery from the case. Any judgment would likely face protracted appeals and  
15 collection delays, particularly when considering the complexity of this case. Furthermore,  
16 settling these claims prior to filing suit achieves a meaningful recovery for creditors without  
17 expending considerable resources, as would be inevitable if the issues were litigated. Berman  
18 Declaration ¶¶ 11&13; Tucker Declaration ¶¶ 11&13.

19 34. The payment to the USACM Trust and DTDF's distributive share of the  
20 Settlement Amount to be paid to the USACM Trust, coupled with other benefits (e.g., avoidance  
21 of all further litigation related costs incurred by DTDF and the USACM Trust), fall well above  
22 the low-point in the range of reasonableness necessary to support this Application.  
23 Consequently, the USACM Trust and DTDF's agreement with BMER meets the standards

1 required by applicable bankruptcy law. The factors discussed above heavily weigh in favor of  
2 the settlement's approval as compromises, of course, are favored in bankruptcy. In re A&C  
3 Props., 784 F.2d 1377, 1381 (9th Cir. 1986), cert. denied, 479 U.S. 854 (1986); 9 Collier on  
4 Bankruptcy ¶ 9019.03[1] (15th Ed. 1990).

5 35. After extensive arms-length negotiations, and weighing all relevant and material  
6 factors, including the Settlement Amount, the strengths of the asserted claims and defenses, the  
7 costs and burdens of litigation, expert witness costs, the effect on the USACM Trust and DTDF's  
8 litigation against other parties, the insurance policy limits and funds available to BMER, and the  
9 general uncertainty and risk of litigation, the Trustee and the Manager believe the Settlement  
10 Agreement with BMER is in the best interest of DTDF, the USACM Trust, and their  
11 beneficiaries.

12 **B. The Bar Order**

13 36. The USACM Trust and DTDF are contractually obligated to seek engage in good  
14 faith efforts to seek the entry of a Bar Order under Nevada Revised Statute 17.225, et seq. The  
15 proposed Bar Order removes a serious obstacle to achieving a meaningful settlement. It  
16 addresses the concern of BMER that it may later be faced with claims for indemnity,  
17 contribution, or other claims arising from the facts underlying this action. Through an order  
18 entered under Nevada Revised Statutes §17.225, et seq., a settling party can extinguish liability  
19 and avoid future litigation, thus providing an incentive for settlement.

20 37. This Court has authority to enter the Bar Order pursuant to Nevada Revised  
21 Statutes §17.225, et seq. when the settlement is made in "good faith." See, e.g., Carpenter v.  
22 U.S., 710 F. Supp. 747, 752-53 (D. Nev. 1988); Velsicol Chemical Corp. v. Davidson, 811 P.2d  
23 561 (Nev. 1991). The legislative purpose of this statute is to foster and encourage settlements.

1 “The language of NRS 17.245 indicates an intent to allow plaintiffs to settle with one tortfeasor  
2 without losing the right to proceed against the rest, while at the same time preventing double  
3 recovery to the plaintiff.” Gen. Motors Corp. v. Reagle, 714 P.2d 176, 177 (Nev. 1986).

4 38. The determination of good faith does not require the court to consider any specific  
5 factors, but rather “should be left to the discretion of the trial court based upon all relevant facts  
6 available.” Velsicol, 811 P.2d at 561 & 563; The Doctors Co. v. Vincent, 98 P.3d 681, 686-87  
7 (Nev. 2004). However, the court may consider factors such as “the amount paid in settlement,  
8 the allocation of the settlement proceeds among plaintiffs, the insurance policy limits of settling  
9 defendants, the financial condition of settling defendants, and the existence of collusion, fraud or  
10 tortious conduct aimed to injure the interests of non-settling defendants.” The Doctors Co., 98  
11 P.3d at 686. As amply demonstrated in the Berman Declaration and the Tucker Declaration, and  
12 the discussion of the Settlement Agreement set out in the previous sections of this Motion, the  
13 Settlement is made in good faith.

14 39. All of the factors considered by the Nevada Supreme Court in The Doctors Co. v.  
15 Vincent weigh in favor of a finding of good faith. The Settlement Amount is substantial to both  
16 of the estates, and avoids costs associated with continued litigation. Berman Declaration ¶ 13;  
17 Tucker Declaration ¶ 13. The USACM Trust and DTDF will share in this settlement in  
18 accordance with a previously set out agreement that was approved by this Court. Tucker  
19 Declaration ¶ 9. BMER’s insurance policy limits are largely exhausted by this settlement, and  
20 BMER is not capable of funding a judgment that is far in excess of a judgment against it.  
21 Berman Declaration ¶ 11; Tucker Declaration ¶ 11. Finally, this settlement was entered into  
22 based on arms-length negotiations, by independent parties, resulting in a fair settlement that was  
23 not aimed to injure the interests of any non-settling defendants. Berman Declaration ¶¶ 4&13;



1 Tucker Declaration ¶¶ 4&13

2 **C. Notice**

3 40. Notice of this Motion has been provided to all of the above-titled estates, and to  
4 USACM Trust and DTDF's creditors. To date, no creditor of the above-titled Debtors has filed  
5 suit against BMER. Additionally, no party has asserted a claim for indemnification or  
6 contribution against BMER. However, the USACM Trust and DTDF have commenced  
7 litigation against persons or entities that may have such claims. Those persons and entities have  
8 also been provided with notice of this Motion.

9 **CONCLUSION**

10 For the foregoing reasons, the Trustee and Manager respectfully requests that this  
11 Honorable Court approve the Settlement Agreement on the terms set forth above, enter the Bar  
12 Order pursuant to Nevada Revised Statutes §17.225, et seq., and provide such other and further  
13 relief as the Court deems appropriate.

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15 DATED this 20th day of October, 2008.

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Respectfully Submitted,

<p><b>DIAMOND MCCARTHY LLP</b></p> <p>By: <u>/s/ Allan B. Diamond</u>  Allan B. Diamond, TX 05801800 (pro hac vice)  J. Maxwell Beatty, TX 24051740 (pro hac vice)  909 Fannin, Suite 1500  Houston, Texas 77010  (713) 333-5100 (telephone)  (713) 333-5199 (facsimile)</p> <p><i>Special Litigation Counsel for USACM Liquidating Trust</i></p>	<p><b>DIAMOND MCCARTHY LLP</b></p> <p>By: <u>/s/ Eric D. Madden</u>  William T. Reid, IV, TX 00788817 (pro hac vice)  Eric D. Madden, TX 24013079 (pro hac vice)  P. Jason Collins, TX 24040711 (pro hac vice pending)  6504 Bridge Point Parkway  Suite 400  Austin, Texas 78730  (512) 617-5200 (telephone)  (512) 617-5299 (facsimile)</p> <p><i>Special Litigation Counsel for USACM Liquidating Trust</i></p>
<p><b>LEWIS AND ROCA LLP</b></p> <p>By: <u>/s/ Rob Charles</u>  Susan M. Freeman, AZ 4199 (pro hac vice)  Rob Charles, NV 6593  3993 Howard Hughes Parkway, Suite 600  Las Vegas, Nevada 89169-5996  (702) 949-8321 (telephone)  (702) 949-8320 (facsimile)</p> <p><i>Counsel for USACM Liquidating Trust</i></p>	

### **CERTIFICATE OF SERVICE**

I hereby certify that, on October 20, 2008, a copy of the foregoing Motion was served either electronically or via first class mail: (a) all creditors, equity holders, and other parties in interest in the USA Capital Bankruptcy Case listed on the master mailing list associated with the case; (b) all existing and prospective defendants to any suits brought or to be brought by the USACM Trust and/or DTFD; and (c) all Direct Lenders (as defined in the Plan).

/s/ William T. Reid, IV  
William T. Reid, IV

## EXHIBIT A

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA**

In re:  
USA COMMERCIAL MORTGAGE COMPANY,  
  
Debtor.

Case Nos.:  
BK-S-06-10725-LBR  
BK-S-06-10726-LBR  
BK-S-06-10727-LBR  
BK-S-06-10728-LBR  
BK-S-06-10729-LBR

In re:  
USA CAPITAL REALTY ADVISORS, LLC,  
  
Debtor.

In re:  
USA CAPITAL DIVERSIFIED TRUST DEED FUND,  
LLC,  
  
Debtor.

JOINTLY ADMINISTERED  
Chapter 11 Cases

In re:  
USA CAPITAL FIRST TRUST DEED FUND, LLC,  
  
Debtor.

Judge Linda B. Riegler

In re:  
USA SECURITIES, LLC,  
  
Debtor.

**ORDER APPROVING  
SETTLEMENT WITH  
BEADLE, MCBRIDE, EVANS &  
REEVES, LLP, ET AL. AND  
ORDER BARRING CERTAIN  
CLAIMS UNDER NEVADA  
REVISED STATUTE §17.225, et  
seq.**

Affects:  
☒ All Debtors  
☐ USA Commercial Mortgage Company  
☐ USA Capital Realty Advisors, LLC  
☐ USA Capital Diversified Trust Deed Fund, LLC  
☐ USA Capital First Trust Deed Fund, LLC  
☐ USA Securities, LLC

1 USACM LIQUIDATING TRUST; and  
2 USA CAPITAL DIVERSIFIED TRUST DEED FUND,  
3 LLC;

4 Plaintiffs,

5 v.

6 BEADLE, MCBRIDE, EVANS & REEVES, LLP,  
7 REEVES, EVANS, MCBRIDE & ZHANG, LLP, TG  
8 MCBRIDE CPA LTD., and T. GARTH MCBRIDE,

9 Defendants.

10 On November 18, 2008 this Court held a hearing on the *Application to Compromise and Settle*  
11 *Controversies with Beadle, McBride, Evans & Reeves, LLP, et al.* (the “Motion”) filed by Geoffrey  
12 Berman (“Berman” or the “Trustee”), Trustee of the USACM Liquidating Trust (the “USACM Trust”) and  
13 Michael Tucker (“Tucker” or the “Manager”), Manager of the USA Capital Diversified Trust Deed Fund,  
14 LLC (“DTDF”). The Motion requested an Order Approving Settlement and for an Order pursuant to  
15 Nevada Revised Statute §17.225, et seq. barring claims against Beadle, McBride, Evans & Reeves, LLP  
16 Reeves, Evans, McBride & Zhang, LLP, TG McBride CPA Ltd., and T. Garth McBride (collectively,  
17 “BMER”) for indemnity and/or contribution.

18 Pursuant to the Motion and as set forth in the separate Findings of Fact and Conclusions of Law  
19 entered pursuant to Bankruptcy Rules of Procedure 9014 and 7052, and Federal Rule of Civil Procedure 52,  
20 this Court makes the following order:

21 1. The Settlement Agreement, Mutual Release, and Covenants dated July 18, 2008 between  
22 the Trustee, the USACM Trust, the Manager, DTDF, and BMER (the “Settlement Agreement”) is  
23 approved.

2. Pursuant to Nevada Revised Statute §17.245, all persons who have received notice of the  
Motion and who allegedly are jointly and severally liable with BMER as joint tortfeasors for injuries or

1 potential injuries described in the Settlement Agreement are barred from asserting any claims for  
2 contribution or indemnity against BMER.

3 3. This Court shall retain jurisdiction to interpret and enforce the terms of the Settlement  
4 Agreement and this Order Approving Settlement.

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## EXHIBIT B

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA**

In re:  
USA COMMERCIAL MORTGAGE COMPANY,  
  
Debtor.

Case Nos.:  
BK-S-06-10725-LBR  
BK-S-06-10726-LBR  
BK-S-06-10727-LBR  
BK-S-06-10728-LBR  
BK-S-06-10729-LBR

In re:  
USA CAPITAL REALTY ADVISORS, LLC,  
  
Debtor.

In re:  
USA CAPITAL DIVERSIFIED TRUST DEED FUND,  
LLC,  
  
Debtor.

JOINTLY ADMINISTERED  
Chapter 11 Cases

In re:  
USA CAPITAL FIRST TRUST DEED FUND, LLC,  
  
Debtor.

Judge Linda B. Riegler

In re:  
USA SECURITIES, LLC,  
  
Debtor.

**FINDINGS OF FACT AND  
CONCLUSIONS OF LAW IN  
SUPPORT OF ORDER  
APPROVING SETTLEMENT  
BEADLE, MCBRIDE, EVANS &  
REEVES, LLP, ET AL. AND  
ORDER BARRING CERTAIN  
CLAIMS UNDER NEVADA  
REVISED STATUTE §17.225, et  
seq.**

Affects:  
☒ All Debtors  
☐ USA Commercial Mortgage Company  
☐ USA Capital Realty Advisors, LLC  
☐ USA Capital Diversified Trust Deed Fund, LLC  
☐ USA Capital First Trust Deed Fund, LLC  
☐ USA Securities, LLC



1 USACM LIQUIDATING TRUST; and  
2 USA CAPITAL DIVERSIFIED TRUST DEED FUND,  
3 LLC;

4 Plaintiffs,

5 v.

6 BEADLE, MCBRIDE, EVANS & REEVES, LLP,  
7 REEVES, EVANS, MCBRIDE & ZHANG, LLP, TG  
8 MCBRIDE CPA LTD., and T. GARTH MCBRIDE,

9 Defendants.

10 This Court, having considered the *Application to Compromise and Settle Controversies with*  
11 *Beadle, McBride, Evans & Reeves, LLP, et al.* (the “Motion”) and the Declarations of Geoffrey L.  
12 Berman and Michael Tucker in support thereof and the arguments of counsel made at the hearing on  
13 the Motion to Compromise held November 18, 2008; and

14 This Court having considered the Pleading in Support of the Motion to Compromise and the  
15 arguments of counsel, now therefore makes the following findings of fact and conclusions of law under  
16 Federal Rule of Civil Procedure 52 and Federal Rules of Bankruptcy Procedure 7052 and 9012.

17 1. Notice of the Motion (“Notice”) was properly served on all creditors of the above-titled  
18 estates and all persons who may have claims for indemnification or contribution.

19 2. The claims being settled are assets of the USACM Liquidating Trust (the “USACM  
20 Trust”). Geoffrey L. Berman (“Berman” or the “Trustee”) currently serves as a trustee of the USACM  
21 Liquidating Trust.

22 3. The claims being compromised also belong to USA Capital Diversified Trust Deed  
23 Fund, LLC (“DTDF”). Michael Tucker (the “Manager”) is the manager of DTDF.

4. The beneficiaries of USACM Trust and DTDF are the creditors of USA Commercial  
Mortgage Company (“USACM”) and the interest holders in DTDF.

1           5.       The claims being compromised herein arise from professional services rendered by  
2       Beadle, McBride, Evans & Reeves, LLP, Reeves, Evans, McBride & Zhang, LLP, TG McBride CPA  
3       Ltd., and T. Garth McBride (collectively, "BMER") to DTDF and FTDF.

4           6.       The USACM Trust and DTDF have investigated the merits of the claims against BMER  
5       and have conducted such investigation as they deemed reasonable into the merits of the claim. In  
6       addition, the USACM Trust and DTDF have inquired into the complexity of proving the potential  
7       claims, the expense of prosecuting such claims, the duration of litigation or other means for  
8       prosecuting the claims, and have evaluated the difficulties of collection and the assets available for  
9       satisfying any potential judgment.

10          7.       Based upon this evaluation, the Trustee and the Manager have recommended this  
11       compromise as fair and equitable.

12          8.       The Compromise is fair and equitable to the USACM Trust and its beneficiaries.

13          9.       The Compromise is fair and equitable to DTDF and its interest holders.

14          10.       At the present time, no claims for indemnification or contribution have been asserted,  
15       although the USACM Trust and DTDF have commenced litigation against persons and entities that  
16       may have such claims.

17          11.       At the present time, no claims have been asserted by creditors of any of the above-titled  
18       estates against BMER.

19          12.       No USACM Trust beneficiary or DTDF interest holder has objected to this compromise  
20       and the entry of a Bar Order under Nevada Revised Statute 17.225 et seq.

21          13.       USACM Trust and DTDF are contractually obligated under the Settlement Agreement,  
22       Mutual Release, and Covenants between the Trustee, the USACM Trust, the Manager, and DTDF, and  
23       BMER (the "Settlement Agreement") to seek approval of this Bankruptcy Court for the compromise.

14. The amount being paid by BMER pursuant to the Settlement Agreement is a material contribution to the USACM Trust and its beneficiaries and to DTDF and its interest holders.

**CONCLUSIONS OF LAW**

1. Notice has been given to all parties to the above-titled estates, including to persons and entities who might reasonably be anticipated to have claims for indemnification and/or contribution.

2. USACM Trust and DTDF have standing to assert the claims being settled and have standing to bring this Motion.

3. In light of the complexity of the potential claims, the expense of litigating these claims, the duration of such litigation and the difficulties of collection in the event the estates are successful, the settlement with BMER is fair and equitable and reasonable under the circumstances.

4. The entry of an order barring claims for indemnification and contribution under Nevada Revised Statute §17.225, et seq. is fair and equitable and reasonable under the circumstances of this case.

5. Having received notice of the prospective entry of this Court's Order Approving Settlement and Order pursuant to Nevada Revised Statute §17.225, any and all parties who have received such notice are hereby barred from asserting any claims against BMER for indemnification and/or contribution under Nevada Revised Statute §17.225, et seq., or otherwise.

###

## EXHIBIT C

**DIAMOND MCCARTHY LLP**

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Special Litigation Counsel for USACM Liquidating Trust

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Rob Charles, NV State Bar No. 006593  
Email: rcharles@lrllaw.com

Counsel for USACM Liquidating Trust

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA**

In re:  
USA COMMERCIAL MORTGAGE COMPANY,  
  
Debtor.

In re:  
USA CAPITAL REALTY ADVISORS, LLC,  
  
Debtor.

In re:  
USA CAPITAL DIVERSIFIED TRUST DEED FUND,  
LLC,  
  
Debtor.

In re:  
USA CAPITAL FIRST TRUST DEED FUND, LLC,  
  
Debtor.

In re:  
USA SECURITIES, LLC,  
  
Debtor.

Affects:  
☒ All Debtors  
☐ USA Commercial Mortgage Company  
☐ USA Capital Realty Advisors, LLC  
☐ USA Capital Diversified Trust Deed Fund, LLC  
☐ USA Capital First Trust Deed Fund, LLC  
☐ USA Securities, LLC

USACM LIQUIDATING TRUST; and  
USA CAPITAL DIVERSIFIED TRUST DEED FUND,  
LLC;

Plaintiffs,

v.

BEADLE, MCBRIDE, EVANS & REEVES, LLP,  
REEVES, EVANS, MCBRIDE & ZHANG, LLP, TG  
MCBRIDE CPA LTD., and T. GARTH MCBRIDE,

Defendants.

Case Nos.:  
BK-S-06-10725-LBR  
BK-S-06-10726-LBR  
BK-S-06-10727-LBR  
BK-S-06-10728-LBR  
BK-S-06-10729-LBR

JOINTLY ADMINISTERED  
Chapter 11 Cases

Judge Linda B. Riegle

**DECLARATION OF GEOFFREY  
L. BERMAN IN SUPPORT OF  
MOTION TO APPROVE  
SETTLEMENT - BMER**

**DECLARATION OF GEOFFREY BERMAN IN SUPPORT OF MOTION TO APPROVE  
SETTLEMENT – BMER**

Geoffrey L. Berman, Trustee of the USACM Liquidating Trust (the “USACM Trust”), hereby declares the following under penalty of perjury:

1. I am the Trustee of the USACM Trust created pursuant to the Third Amended Joint Chapter 11 Plan of Reorganization (the “Joint Plan”) filed by USA Commercial Mortgage Company (“USACM”), USA Capital Realty Advisors, LLC, USA Capital Diversified Trust Deed Fund, LLC (“DTDF”), USA Capital First Trust Deed Fund, LLC (“FTDF”), and USA Securities, LLC (collectively, the “Debtors”) on November 15, 2006. The plan was confirmed by order of this Court on January 8, 2007 and became effective on March 12, 2007.

2. Pursuant to the Joint Plan, the USACM Trust was vested with all of USACM’s litigation claims and all of FTDF’s assignable litigation claims. This Court retained jurisdiction in Section VIII. D of the Joint Plan over numerous matters, including “[h]earing and determining any and all adversary proceedings, motions, applications, requests for disgorgement and contested or litigated matters arising out of, arising under or related to the Chapter 11 Cases, including with out limitation the Litigation Claims and the Non-Debtor Insider Litigation” and “[a]pproving compromises and settlements under Rule 9019 of the Bankruptcy Rules to the extent required under or included in the plan.”

3. After I was appointed as the Trustee of the USACM Trust, I authorized an extensive investigation as to the factual circumstances that led to USACM and FTDF’s bankruptcies. During the course of this investigation, facts were found that that gave rise to litigation claims against Beadle, McBride, Evans & Reeves, LLP Reeves, Evans, McBride & Zhang, LLP, TG McBride CPA Ltd., and T. Garth McBride (collectively, “BMER”) related to its

1 audits of DTDF and FTDF's financial statements. Based on that investigation, I believe the  
2 Trust has claims against BMER that it failed to conduct its audits of DTDF in accordance with  
3 contractual and professional standards. This allowed certain insiders to perpetrate a financial  
4 fraud on USACM, DTDF, and other related entities, thereby leading to the loss of tens of  
5 millions of dollars. I also believe that the Trust has claims against BMER for failing to  
6 appropriately audit the financial statements of FTDF, thereby causing the loss of substantial  
7 sums of money due to defaulting loans. As a result of these findings, the USACM Trust and  
8 DTDF filed a civil complaint against BMER in the United States Bankruptcy Court District of  
9 Nevada, Adversary No. 08-1164 on May 16, 2008.

10 4. The USACM Trust and BMER participated in informal settlement discussions in  
11 May 2008 related to its claims, but it did not immediately result in a compromise of the USACM  
12 Trust's claims against BMER. However, the USACM Trust and BMER continued to discuss  
13 settlement for the period following that meeting. After extensive discussions, meetings, and  
14 arms-length settlement negotiations, I ultimately arrived at a settlement agreement with BMER  
15 in July 2008. This agreement was memorialized in the Settlement Agreement, Mutual Release,  
16 and Covenants that was entered into between the USACM Trust, DTDF, and BMER (the  
17 "Settlement Agreement").

18 5. I, along with Special Litigation Counsel, have analyzed the USACM Trust's  
19 claims against BMER and the Settlement Agreement. I believe the Settlement Agreement with  
20 BMER and the proposed settlement set forth therein are fair, reasonable, and in the best interests  
21 of the USACM Trust and its beneficiaries for the reasons set forth below. I have entered into the  
22 settlement agreement with BMER in good faith after weighing what I believe to be all relevant  
23 and material factors, including but not limited to the amount of the proposed settlement; the

1 strengths of the asserted claims and defenses; the costs and burdens of litigation of the claims to  
2 judgment, including expert witness costs; the effect of such litigation on the Trustee's litigation  
3 against other parties; the insurance policy limits and insurance funds available to BMER to pay  
4 the claims now and in the future and other potential sources of payment by BMER of the claims  
5 now and in the future; and the general uncertainty involved in litigation of the claims.

#### 6 **BMER CLAIMS**

7 6. The USACM Trust's claims are for accounting malpractice/professional  
8 negligence and breach of contract related to services provided to DTDF and FTDF. BMER  
9 audited DTDF's financial statements for the fiscal years ending in December 31, 2000 through  
10 December 31, 2003. For the fiscal years 2001 through 2002, BMER issued unqualified audit  
11 opinions on DTDF's financial statements. BMER continued work on DTDF's 2003 financial  
12 statements through October of 2004, when it was informed DTDF no longer required audit  
13 services. BMER issued unqualified audit opinions on FTDF's March 29, 2001 through  
14 December 31, 2004 financial statements. BMER began audit work on FTDF's December 31,  
15 2005 financial statements, but was unable to complete its services because FTDF filed for  
16 bankruptcy protection during BMER's 2005 audit.

17 7. I believe that the USACM Trust's claims against BMER have substantial merit  
18 and that BMER bears substantial responsibility for USACM and FTDF's losses. BMER has  
19 strongly denied the validity of any such claims and any potential liability to the Trust. In  
20 assessing the appropriate settlement in this matter, I have taken into account BMER's assertions  
21 that the problems encountered in the audit were caused by certain management and employees of  
22 USACM, DTDF, and FTDF; and that the accuracy of the financial statements was the  
23 responsibility of management and not BMER.



1           8.     The case filed against BMER is complex, and will be expensive for both the  
2 USACM Trust and BMER to litigate. I am also aware that the outcome of the case, like any  
3 other litigation outcome, is inherently uncertain and subject to risk.

4           9.     The USACM Trust's attorneys and BMER's attorneys agreed to informal  
5 settlement discussions in an effort to resolve the claims, with my full knowledge and consent.  
6 However, no resolution of the USACM Trust's claims was reached at the meeting in May 2008.  
7 Further discussion and negotiations between counsel for the USACM Trust and counsel for  
8 BMER ensued over the period that followed. The parties explored the merits of the claims and  
9 defenses, and the complexity, expense, and unpredictability of the litigation of the claims against  
10 BMER. The USACM Trust and BMER entered into a settlement with respect to the USACM  
11 Trust's claims against BMER. The terms and conditions of the proposed settlement are set forth  
12 in the Settlement Agreement.

13          10.    The proposed settlement agreement with BMER, in my judgment, is reasonable,  
14 fair, and in the interest of the USACM Trust. The amount of the settlement is substantial in light  
15 of the current stage of the case, the complexity, expense, and the risks and uncertainty of  
16 litigation, especially in light of the funds available for BMER to resolve the matter. I have  
17 entered into the proposed settlement in good faith, and there has been no collusion or other  
18 improper conduct in connection with this proposed settlement to my knowledge.

19          11.    In assessing the appropriate settlement in this matter, I have also taken into  
20 account that litigation against BMER at this time would present additional expense to the  
21 USACM Trust. I am not confident that BMER has the financial capability, through insurance or  
22 otherwise, to pay a judgment that the Trustee would be likely to recover against it on the relevant  
23 claims. In connection with the settlement negotiations, BMER's insurance carrier has strongly

1 asserted that there are meritorious coverage defenses under the relevant insurance policies that  
2 may make all or some of the policy proceeds unavailable to pay any judgment the Trustee may  
3 recover against BMER. This settlement is significant relative to the total amount of coverage  
4 BMER has available for USACM's claims. Additionally, the settlement nearly exhausts  
5 BMER's available insurance coverage, and in light of potential coverage defenses, I believe it to  
6 be reasonable.

7 12. In addition, continued litigation of the Trustee's claims against BMER would be  
8 complex, expensive, time-consuming, and the outcome of any such litigation would inherently  
9 be uncertain. Any litigation of this claim would involve substantial costs related to discovery  
10 alone as there are millions of pages of documents related to this claim, many witnesses that  
11 would need to be deposed, and the claims would require the retention of multiple expert  
12 witnesses.

13 13. There is a substantial benefit to the USACM Trust from resolving the claims  
14 against BMER now, without the necessity of continued litigation. I believe that the settlement  
15 amount is within the reasonable range of likely outcomes from litigation in light of issues related  
16 to the ultimate collectibility of any judgment against BMER. In light of all of the relevant  
17 factors, the proposed settlement with BMER is reasonable, fair and in the best interests of the  
18 USACM Trust, and will facilitate a prompt and meaningful recovery to the USACM Trust and  
19 its beneficiaries.

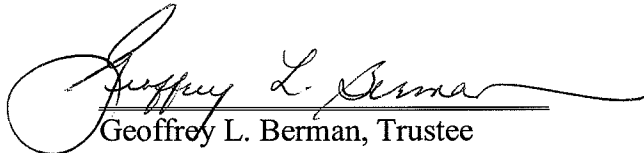
#### 20 **PROTECTION AGAINST THIRD-PARTY CLAIMS**

21 14. During the negotiations with BMER, the protection of BMER against the  
22 possibility of claims for contribution or indemnity was a significant issue. BMER wants  
23 reasonable assurance that they will not be subject to such further claims and litigation arising

1 from many of the same events. Such claims for contribution or indemnity could conceivably be  
2 asserted by current defendants in other cases related to the Debtors' bankruptcy, although none  
3 have in fact been asserted to date.

4 15. Entry of an appropriate order protecting BMER against the possibility of future  
5 claims for contribution or indemnity will be of benefit to the USACM Trust, and will serve the  
6 purposes of the Joint Plan by facilitating recoveries for the benefit of the beneficiaries of the  
7 USACM Trust who have suffered loss as a result of the events leading to the Debtors'  
8 bankruptcy.

9 I DECLARE under penalty of perjury that the foregoing is true and correct and that this  
10 declaration was executed on October 20, 2008.

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13 Geoffrey L. Berman, Trustee  
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## EXHIBIT D

Declaration of Michael Tucker  
Will be Supplemented  
Under Separate Filing

## EXHIBIT E

## **SETTLEMENT AGREEMENT, MUTUAL RELEASE, AND COVENANTS**

This SETTLEMENT AGREEMENT, MUTUAL RELEASE, AND COVENANTS (this "Agreement") is made and entered into by the USACM LIQUIDATING TRUST ("USACM Trust"), USA CAPITAL DIVERSIFIED TRUST DEED FUND, LLC ("DTDF") and BEADLE, MCBRIDE, EVANS & REEVES, LLP, REEVES, EVANS, MCBRIDE & ZHANG, LLP, TG MCBRIDE CPA LTD., AND T. GARTH MCBRIDE (collectively, "BMER") (the USACM Trust, DTDF, and BMER are each individually referred to as a "Party" and collectively referred to as, the "Parties").

### **Recitals**

A. On April 13, 2006 (the "Petition Date"), USA Commercial Mortgage Company ("USACM"), DTDF, USA Capital First Trust Deed Fund, LLC ("FTDF"), USA Securities, LLC, and USA Capital Realty Advisors, LLC (collectively, the "USA Capital Debtors") filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Nevada (the "Bankruptcy Court") that are jointly administered as Case No. BK-S-06-10725-LBR (the "USA Capital Bankruptcy Case").

B. On November 15, 2006, the USA Capital Debtors filed their First Amended Disclosure Statement [Docket #1798] (the "Disclosure Statement") for the USA Capital Debtors' Third Amended Joint Plan of Reorganization [Docket # 1799] (the "Plan"), which was confirmed by the Bankruptcy Court by Order dated January 8, 2007 [Docket #2376] (the "Confirmation Order") and the Findings of Fact and Conclusions of Law in Support of the "Order Confirming the Debtors' Third Amended Joint Plan of Reorganization, As Modified Herein" [Docket #2377] dated January 8, 2007. On December 8, 2006, the USACM Committee filed its Plan Documents Supplement and Disclosures [Docket # 2002] (the "USACM Disclosure Supplement"). Also on December 8, 2006, the DTDF Committee filed its Plan Documents Supplement and Notice of Disclosures [Docket #2001] (the "DTDF Disclosure Supplement"). The Plan became effective on March 12, 2007.

C. The USACM Trust was created pursuant to the Plan and is governed by the provisions of the Liquidating Trust Agreement (the "USACM Trust Agreement") as described in the USACM Disclosure Supplement. Geoffrey L. Berman serves as the trustee of the USACM Trust ("USACM Trustee"). The Plan retained USACM's causes of action [Plan ¶ IV. D. 1] along with certain of FTDF's causes of action [Plan ¶ IV. D. 1], for enforcement by the USACM Trust. Pursuant to the USACM Trust Agreement [USACM Trust Agreement ¶¶ 2.1. (a) and recital E], USACM Trust's beneficiaries include the holders of all allowed general unsecured creditor claims against USACM as defined in Plan ¶ II. C. 1. d.

D. The USACM Trust was vested, pursuant to the Plan, with all USACM Litigation Claims as defined in Plan ¶¶ I. A. 95 and IV. D. 1. Additionally, the USACM Trust was vested, pursuant to the Plan, with all assignable FTDF Litigation Claims as defined in Plan ¶¶ I. A.

95, IV. D. 1, and IV. E. 2. j. FTDF was dissolved on January 16, 2008, as required by Plan ¶ IV. A. 6.

E. The Plan also expressly retained DTDF's causes of action [Plan ¶ IV. D. 2] for enforcement by post-effective date DTDF, including the Litigation Claims as defined in Plan ¶¶ I. A. 95 and IV. D. 2. Pursuant to the Plan and the Confirmation Order, Michael Tucker serves as manager of DTDF (the "DTDF Manager"). Pursuant to DTDF's Amended and Restated Operating Agreement (the "DTDF Operating Agreement") included in the DTDF Disclosure Supplement, DTDF's members are the beneficiaries of any DTDF distributions [DTDF Operating Agreement ¶ 7.03]. DTDF Operating Agreement ¶ 1.21 defines DTDF's members as the holders of all allowed DTDF equity interests described in Plan ¶ II. C. 3. e.

F. The USACM Trust and DTDF hold any and all potential claims and causes of action, whether arising pre-petition or post petition, that USACM, USACM Trust, and DTDF may have or may at any time have had against BMER. Additionally, the USACM Trust holds any and all assignable claims and causes of action that were the property of or could be asserted by FTDF or its respective estate against BMER.

G. On May 16, 2008, USACM Trust, as the duly authorized successor-in-interest to USACM and to certain claims of FTDF, and DTDF, on behalf of itself and as the duly authorized successor-in-interest to certain claims of FTDF, filed a civil complaint against BMER in the United States Bankruptcy Court District of Nevada, Adversary No. 08-1164 ("the Action").

H. On July 3, 2008, BMER agreed to pay USACM Trust One Million Five Hundred Thousand Dollars And No Cents (\$1,500,000.00) to settle the Action in exchange for a full release by USACM, USACM Trust, the USACM Trustee, FTDF, DTDF, and the DTDF Manager as respects any and all claims which were or could have been asserted by said entities in the Action or in any other proceeding, exclusive of any obligations under this Agreement.

### **Terms and Conditions**

NOW, THEREFORE, in consideration for the covenants, promises and releases set forth herein, and in full settlement of all such claims, the Parties hereby agree on behalf of themselves and any and all of their predecessors, successors, assigns, insurers, and any other parties or persons claiming by, through or under any of the Parties hereto, as follows:

1. On or before the Payment Date defined in paragraph 6 of this Agreement, BMER shall pay the sum of One Million Five Hundred Thousand Dollars And No Cents (\$1,500,000.00), by wire transfer to the following account: USACM Trust, Account No. 304-923176, ABA No. 021000021, at JPMorgan Chase Bank, N.A., New York, NY (the "Settlement Payment").

2. Subject to the conditions set forth in paragraph 4 below, USACM Trust, as the duly authorized successor-in-interest to USACM and to certain claims of FTDF, and DTDF, on behalf of itself and as the duly authorized successor-in-interest to certain claims of FTDF, the



USACM Trustee, and the DTDF Manager (collectively the "Settling Debtors") fully release and discharge BMER, and all of its present and former principals, partners, directors, officers, employees, staff, agents, representatives, predecessors, successors, and assigns, and their respective attorneys, consultants, adjustors and insurers in their capacities as such (collectively, the "BMER Released Parties"), from any and all claims, demands, damages, liabilities, actions, causes of action or suits at law or in equity of whatever kind, state or federal, known or unknown that the Settling Debtors ever had or now have or hereafter may acquire against the BMER Released Parties, arising out of, directly or indirectly, or in any way involving, relating to, based upon, or in connection with the Action, including but not limited to, claims in tort or contract, avoiding power claims under the Bankruptcy Code or any other statute, claims for professional malpractice, negligence, aiding and abetting, breaches of fiduciary duty, and breach of contract, and claims related in any manner to any professional engagement or services performed by BMER for or on behalf of the Settling Debtors, but excluding from the foregoing release any obligations under this Agreement. Settling Debtors acknowledge that they may have claims which they do not know or suspect to exist, or claims that they may not know or suspect to be assertable on behalf of other persons or entities who are not Settling Debtors (the "Settling Debtor Unknown Claims"). Settling Debtors acknowledge that the Settling Debtor Unknown Claims may be material and that the Settling Debtor Unknown Claims would, if known to Settling Debtors, materially affect their settlement with BMER. Settling Debtors waive any Settling Debtor Unknown Claims and any right to invalidate this Agreement based on any Settling Debtor Unknown Claims. Further, Settling Debtors waive their rights under any statute or common law rule providing that unknown claims are not compromised or released. The Settling Debtors agree that this Agreement be interpreted to effectuate the broadest discharge of BMER, to the maximum extent allowed by law and equity, of any and all claims which have been and might have been asserted by the Settling Debtors against BMER arising from any professional engagement or services by BMER for or on behalf of the Settling Debtors.

3. Subject to the conditions set forth in paragraph 4 below, BMER, for themselves and on behalf of the BMER Released Parties, fully releases and discharges: (a) USACM, the USACM Trust, the USACM Trustee, and all of their present and former trustees, managers, employees, agents, consultants, attorneys, directors, and officers, and their respective insurers in their capacities as such (collectively, the "USACM Trust Released Parties"), from any and all claims, demands, damages, liabilities, actions, causes of action or suits at law or in equity of whatever kind, state or federal, known or unknown, which BMER or the BMER Released Parties ever had, now have, or hereafter may acquire against the USACM Trust Released Parties arising out of, directly or indirectly, or in any way involving, relating to, based upon, or in connection with the Action, including but not limited to, claims in tort or contract, avoiding power claims under the Bankruptcy Code or any other statute, claims for professional malpractice, negligence, aiding and abetting, breaches of fiduciary duty, and breach of contract, and claims related in any manner to any professional engagement or services performed by BMER for or on behalf of the Settling Debtors, but excluding from the foregoing release any obligations under this Agreement; and (b) DTDF, the DTDF Manager, and all of their present and former trustees, managers, employees, agents, attorneys, directors, and officers, and their respective insurers in their capacities as such

(collectively, the "DTDF Released Parties"), from any and all claims, demands, damages, liabilities, actions, causes of action or suits at law or in equity of whatever kind, state or federal, known or unknown, which BMER or the BMER Released Parties ever had, now have, or hereafter may acquire against the DTDF Released Parties arising out of, directly or indirectly, or in any way involving, relating to, based upon, or in connection with the Action, including but not limited to, claims in tort or contract, avoiding power claims under the Bankruptcy Code or any other statute, claims for professional malpractice, negligence, aiding and abetting, breaches of fiduciary duty, and breach of contract, and claims related in any manner to any professional engagement or services performed by BMER for or on behalf of the Settling Debtors, but excluding from the foregoing release any obligations under this Agreement. BMER acknowledges that it may have claims which it does not know or suspect to exist, or claims that it may not know or suspect to be assertable on behalf of other persons or entities who are not BMER (the "BMER Unknown Claims"). BMER acknowledges that the BMER Unknown Claims may be material and that the BMER Unknown Claims would, if known to BMER, materially affect its settlement with the Settling Debtors. BMER waives any BMER Unknown Claims and any right to invalidate this Agreement based on any BMER Unknown Claims. Further, BMER waives its rights under any statute or common law rule providing that unknown claims are not compromised or released. This Agreement and BMER's release of the USACM Released Parties and the DTDF Released Parties shall not prohibit BMER from asserting the facts underlying the Released Claims as a bar, defense, affirmative defense, or otherwise in defense of any litigation; provided however, notwithstanding anything to the contrary, under all circumstances, BMER shall be barred from pursuing any claims or seeking any relief against the USACM and DTDF Released Parties with respect to the claims released herein.

4. The releases set forth in paragraph 2 and 3 above shall become effective only when: (a) an order by the Bankruptcy Court approving this Agreement (the "Approval Order") becomes a Final Order; (b) the Settling Debtors irrevocably receive the Settlement Payment in good funds; and (c) BMER receives a file-endorsed copy of a stipulation of dismissal with prejudice of the Action.

5. The term "Final Order" as used herein means (i) an Order of the Bankruptcy Court as to which the time to appeal, or move for re-argument or rehearing has expired, and as to which no appeal, or other proceedings for re-argument or rehearing shall then be pending; or (ii) in the event that an appeal, re-argument, or rehearing thereof has been sought, such order of the Bankruptcy Court has been affirmed in material respects by the highest court to which such order has been appealed, and the time to take any further appeal, move for re-argument, or rehearing shall have expired; provided however, notwithstanding the foregoing, an Order that is subject to appeal may be treated as a Final Order if no stay of the Order has been obtained and the Parties consent to treating such Order as a Final Order.

6. The term "Payment Date" as used herein means the date that is ten (10) business days after the Approval Order becomes a Final Order.

7. Within five (5) business days of receipt of the Settlement Payment, the Settling Debtors shall file a stipulation of dismissal with prejudice of the Action and provide to BMER file-endorsed copies of the filed stipulation of dismissal by facsimile and email.

8. Except for the written warranties, representations, covenants, terms and conditions specifically set forth herein, in executing this Agreement, no Party has received nor relied upon any oral or written representation, statement or communication of any other Party or Party representative regarding any past or present fact, circumstance, condition, state of affairs, legal effect, or promise of future action.

9. Each of the persons and entities constituting BMER agree to reasonably cooperate with the Settling Debtors and their counsel in connection with the investigation and pursuit of potential claims against other persons or entities. Without limiting the foregoing, each of the BMER persons and entities agree to consult with, be interviewed by, provide documents and data (including electronically stored data) to, and provide truthful and accurate information to the Settling Debtors and/or their counsel as may be reasonably requested from time to time by the Settling Debtors or their counsel in Las Vegas, Nevada. The BMER persons and entities further agree to make themselves available to testify at depositions, hearings, trials, or other proceedings as may be reasonably requested from time to time by the Settling Debtors or their counsel, in Las Vegas, Nevada. So long as the above time requests are not unreasonable, the BMER persons and entities shall not be entitled to compensation for anytime spent in connection with the foregoing but shall be entitled to reimbursement of actual out of pocket expenses reasonably incurred; provided that said reimbursable out of pocket expenses shall not include any costs or charges for internal time of any BMER person or entity or that of their employees, any contract or temporary employees, or the like.

10. Notice of this Agreement and application for the Approval Order shall be given to: (a) all creditors, equity holders, and other parties in interest in the USA Capital Bankruptcy Case listed on the master mailing list associated with such case; (b) all existing and prospective defendants to any suits brought or to be brought by the USACM Trust and/or DTDF; and (c) all Direct Lenders (as defined in the Plan).

11. Any notice in connection with this Agreement to each of the Parties shall be given, by facsimile and by certified mail, to the following individuals:

For the USACM Trust:

Geoffrey L. Berman, Trustee  
c/o DEVELOPMENT SPECIALISTS, INC.  
333 South Grand Avenue, Suite 4070  
Los Angeles, California 90071-1544  
Telephone: (213) 617-2717  
Facsimile: (213) 617-2718

William T. Reid, IV, Esq.  
DIAMOND MCCARTHY LLP  
6504 Bridge Point Parkway, Suite 400  
Austin, Texas 78730  
Telephone: (512) 617-5200  
Facsimile: (512) 617-5299

For DTF:

Michael Tucker  
c/o FTI CONSULTING  
Two North Central Avenue, Suite 1200  
Phoenix, Arizona 85004-2322  
Telephone: (602) 744-7100  
Facsimile: (602) 744-7110

Jeffery D. Hermann, Esq.  
ORRICK, HERRINGTON & SUTCLIFFE LLP  
777 South Figueroa Street, Suite 3200  
Los Angeles, California 90017-5855  
Telephone: (213) 612-2413  
Facsimile: (213) 612-2499

For BMER:

Gary P. Sinkeldam  
MAXIE RHEINHEIMER STEPHENS & VREVICH, LLP  
618 South Seventh Street  
Las Vegas, Nevada 89109  
Telephone: (702) 866-0089  
Facsimile: (702) 866-0093  
Thomas W. Davis, II  
HOWARD & HOWARD  
3800 Howard Hughes Parkway, Suite 1400  
Las Vegas, Nevada 89169  
Telephone: (702) 257-1483  
Facsimile: (702) 567-1568

Garth McBride  
REEVES EVANS McBRIDE & ZHANG, LLP  
2285 Renaissance Dr.  
Las Vegas, Nevada 89119

Telephone: (702) 597-0010

Facsimile: (702) 597-2767

12. The Parties agree to engage in good faith efforts to: (a) seek entry of the Approval Order; (b) seek in the Approval Order a provision that specifically bars the assertion of any claims for contribution or indemnity against BMER by any non-settling defendants in connection with other claims asserted by the Settling Debtors; and (c) support this Agreement in all material ways including in its application and enforcement against any and all persons or entities seeking to prohibit approval of this Agreement or entry of the Approval Order.

13. This Agreement is entered into as a good faith compromise among the Parties for the complete and final settlement of any and all claims, disputes and causes of action among them. By this settlement, no Party admits liability to any other Party in any respect, or makes any admission as to factual or legal contentions relating to the matters released herein. The sole purpose of this Agreement is to avoid the hazards, uncertainties, and expenses of further litigation.

14. All Parties have reviewed and revised, or had the opportunity to revise, this Agreement. The Parties agree that any uncertainty or ambiguity will not be interpreted or construed against any Party under any rule of interpretation providing for interpretation against the Party who caused an uncertainty to exist or against the draftsman, and the Agreement shall be construed as if all Parties prepared it jointly. This Agreement provides no rights to any third party except to the extent expressly set forth herein (if any).

15. The Parties warrant and represent that they are the sole owners of the rights and claims each of them relinquish by this Agreement and, prior to entering into this Agreement, have not sold, transferred, or assigned any rights or obligations under this Agreement or any insurance policy used or relied upon to fund the Settlement Payment.

16. This Agreement constitutes the entire agreement among the Parties on the subjects addressed herein. No supplement, modification, amendment, waiver or termination of this Agreement shall be binding unless executed in writing by the Parties to be bound thereby. This Agreement is executed without reliance upon any representations by any person or entity concerning the nature, cause or extent of injuries, or legal liability therefore, or any other representations of any type or nature except as set forth herein. No contrary or supplementary oral agreement shall be admissible in a court to contradict, alter, supplement, or otherwise change the meaning of this Agreement. THE PARTIES ALSO ACKNOWLEDGE THE CONTESTED AND ADVERSARIAL NATURE OF THE USACM TRUST AND DTDF CLAIMS AND UNDERLYING DISPUTES AND STIPULATE THAT IN EXECUTING THIS AGREEMENT THEY ARE NOT RELYING ON ANY REPRESENTATION BY ANY OTHER PARTY OR ITS/HIS AGENTS, REPRESENTATIVES OR ATTORNEYS, WITH REGARD TO (1) FACTS UNDERLYING THE LAWSUIT, (2) THE SUBJECT MATTER OR EFFECT OF THIS AGREEMENT, AND (3) ANY OTHER FACTS OR ISSUES WHICH



MIGHT BE DEEMED MATERIAL TO THE DECISION TO ENTER INTO THIS AGREEMENT, OTHER THAN AS SPECIFICALLY SET FORTH IN THIS AGREEMENT.

17. If any term or provision of this Agreement shall be determined to be unenforceable or invalid or illegal in any respect, the unenforceability, invalidity or illegality shall not affect any other term or provision of this Agreement, but this Agreement shall be construed as if such unenforceable, invalid or illegal term or provision had never been contained herein.

18. This Agreement may be executed in any number of counterparts each of which, when executed and delivered, shall be deemed an original and all of which together shall constitute but one and the same agreement. The signatories executing this Agreement represent and warrant that they are authorized to execute this Agreement on behalf of the Parties and entities for whom they sign. Signatures obtained by facsimile or email in PDF format shall be deemed to be an original signature.

19. Each Party agrees to bear its own fees and costs with respect to any duties required of the Party under this Agreement; in any matter involving, referring, or relating to the interpretation and enforcement of this Agreement; and in connection with any disputes between the Parties that may arise out of this Agreement.

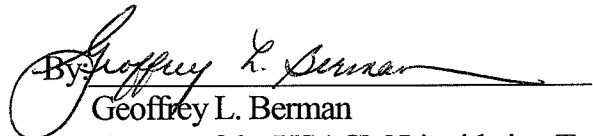
20. This Agreement is to be governed by the law of the State of Nevada. The Bankruptcy Court shall retain exclusive jurisdiction over the interpretation and enforcement of this Agreement, as well as any disputes that may arise between the Parties relating to this Agreement, and the Parties consent to the exclusive jurisdiction of the Bankruptcy Court for these purposes.

21. This Agreement is subject to approval by the Bankruptcy Court.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the last date written below on which a signatory signs the Agreement.

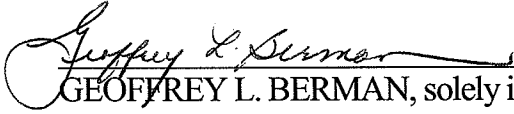
DATED: September 11, 2008

USACM LIQUIDATING TRUST on behalf of  
itself and as the duly authorized successor-in-  
interest to USACM and to certain claims of  
FTDF

  
Geoffrey L. Berman

Trustee of the USACM Liquidating Trust

DATED: September 11, 2008

  
\_\_\_\_\_  
GEOFFREY L. BERMAN, solely in his  
capacity as Trustee of the USACM Liquidating  
Trust

DATED: September \_\_\_, 2008

USA CAPITAL DIVERSIFIED TRUST DEED  
FUND, LLC on behalf of itself and as the duly  
authorized successor-in-interest to certain claims  
of FTDF

By: \_\_\_\_\_  
Michael Tucker  
Manager of USA Capital Diversified Trust  
Deed Fund, LLC

DATED: September \_\_\_, 2008

\_\_\_\_\_  
MICHAEL TUCKER, solely in his capacity as  
Manager of USA Capital Diversified Trust Deed  
Fund, LLC

DATED: September \_\_\_, 2008

BEADLE, MCBRIDE, EVANS & REEVES,  
LLP

By: \_\_\_\_\_

DATED: September \_\_\_, 2008

REEVES, EVANS, MCBRIDE & ZHANG,  
LLP

By: \_\_\_\_\_

DATED: September \_\_\_, 2008

TG MCBRIDE CPA LTD.

By: \_\_\_\_\_

DATED: September \_\_\_, 2008

\_\_\_\_\_  
T. GARTH MCBRIDE